MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021/2022

ULT 2622 – LAW OF TORTS II

(All sections / Groups)

18 APRIL 2022
Reading Time: 2.45 p.m. – 3.00 p.m.
(15 Minutes)
Answering Time: 3.00 p.m. – 6.00 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 questions only.

3. Attempt TWO questions in Part A and answer ALL questions from Part B. All questions carry equal marks and the distribution of the marks for each question is given.

4. Please write all your answers in the Answer Booklet provided.

PART A
ANSWER TWO QUESTIONS ONLY

QUESTION 1

There is a direct and visible relationship between social mischief and legal remedy. The growth of one necessitates the growth of the other. It was in compliance with this truth that in England and America, when rapid industrialisation and urbanisation took place during the nineteenth century, a fundamental reorientation of previously entrenched common law had become a necessity. Similarly, to handle a situation of an escaping mischief, the creation of the rule in *Rylands v Fletcher* was seen as a necessity.

Based on the above propositions: -

a) Differentiate between the rule in *Rylands v Fletcher* and the tort of nuisance.

(10 marks)

b) Determine how the concept of foreseeability as propounded in *Wagon Mound* was applied in the rule of *Rylands v Fletcher* as decided in the case of *Cambridge Water v Eastern Counties Leather plc* [1994] 1 All ER 53.

(15 marks)

(Total: 25 marks)

QUESTION 2

a) Differentiate between the law of breach of statutory duty and the law of negligence.

(8 marks)

b) Analyse whether the law of breach of statutory duty should be abolished considering its similarities with negligence.

(7 marks)

c) In the case of *Hu Sepang v Keong On Eng & Ors* [1991] 1 MLJ 440, it was held that to establish civil liability for a breach of statutory duty, the plaintiff must show that the statutory duty is not fulfilled.

Examine the possible factors in cases where the statutory duty is not fulfilled.

(10 marks)

(Total: 25 marks)

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QUESTION 3

a) Breach of confidence happens when the defendant discloses the plaintiff's trade information without his consent, which resulted in the plaintiff suffering some losses or damages in respect of his business. There were two ways that the breach could happen.

Analyse the two ways in which a breach of confidence may take place and examine the elements of the breach.

(15 marks)

b) The tort of deceit arises when there has been a fraudulent representation resulting in damage to another. The claimant must prove fraud on part of the defendant.

In reference to the case of *Loh Bee Tuan v Shing Yin Construstion (Kota Kinabalu) Sdn Bhd* [2002] 3 CLJ 39 at 49, analyse the law of deceit under the liability for false statement in Malaysia.

(10 marks)

(Total: 25 marks)

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PART B
ANSWER ALL QUESTIONS

QUESTION 4

MyCab is an e-hailing company offering e-hailing and delivery services to customers in Malaysia. MyCab introduced their mobile app to be used by their customers to book a car to reach their selected destination or to deliver goods to somebody else. The app identifies the customer's location through the smartphone's geolocation system. The app will identify the nearest available driver who is logged into the app and informs him of the request. The driver will be notified with the customer's first name and his destination and has thirty seconds to decide whether to accept the request. If the driver does not respond within that time, the next closest driver is located and offered the trip. Once a driver accepts, the trip is assigned to that driver. The app will send a booking confirmation to the customer, with the driver's name and car details.

Then, the customer will be notified of the fare, which is calculated based on a standard formula. The payment will be charged through their credit or debit card or e-wallet system. The drivers are not allowed to accept any cash and the weekly proceeds will be credited to the drivers based on the profit-sharing percentage as agreed between MyCab and the drivers.

Drivers who signed up to drive with MyCab are subject to certain terms and conditions. Among others is, drivers are required to use their own private cars or rented cars for e-hailing and delivery purposes. Hence, they also have to bear the cost of petrol and vehicle maintenance on their own. Besides, they also need to complete a e-hailing training before they could start driving with MyCab. They are not required to wear a uniform but they have to wear smart casual with a nametag carrying MyCab logo.

Sam has registered to drive with MyCab. He used his own car for those purposes. Recently, Sam's customer, Dahlia complained that she was sexually harassed by Sam while she was using his e-hailing service. Sam also charged her extra payment to be paid by cash due to long route he has taken to Dahlia's destination to avoid traffic jam. She claimed damages amounting to RM15,000 for her loss, emotional pain and humiliation from MyCab as Sam's employer.

On another occasion, Sam has lent his car to his friend, Danny while he was away for holidays. Danny used the car for e-hailing and delivery purposes. The car involved in an accident where a victim was being hit while Danny was on his way to deliver the customer's goods. Police investigation found that Danny is the sole cause of the collision. The affected victim, Ray suffered broken arms and legs injury. He claimed compensation from Danny and MyCab as the owner of the e-hailing services.

MyCab denied their liability and refused to pay any compensations to the victims. They contended that they are not Sam's employer and thus, they are not in a position to pay anything to those who are affected by Sam's negligence or misconduct.

Based on the above, assess the liability of MyCab to the loss and injury suffered by Dahlia and Ray, by applying the principles of vicarious liability under the law of torts.

(Total: 25 marks)

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QUESTION 5

Billy, a 30-year old banker at Mesra Bank, received an offer from an established university to pursue a short Finance course in United Kingdom for three months. In January 2022, after discussion with his boss and family, he decided to take up the offer and make arrangements to go to United Kingdom. Billy's boss approved for paid leave for three months and had even sponsored Billy his plane ticket to show his support. During the flight, there was a pilot error, causing it to crash. It was reported that there were no survivors in the plane crash, including Billy. Billy was married to Cindy, and has a two-year-old daughter, Lucy. Prior to Billy's death, his parents live with him and his wife. His parents are not working and depend solely on Billy's earnings. His annual income after tax reduction is RM70,000 and his necessities such as food and entertainment is roughly around RM1000 per month. He also has an ex-wife, Kylie.

Billy's brother Beanie was disheartened by the news. He decided to go to the bar to get himself drunk. At the bar, he accidentally pushed Rio, one of the customers at the bar. Feeling angry, Rio grabbed Beanie and choked him. Beanie took a wine glass and hit Rio on his head. Rio immediately fainted.

Based on the above situation;

a) Assuming that the pilot is negligent, with relevant authorities, compute the amount of damages that Billy's wife, daughter, brother, parents and ex-wife may claim, if any.

(20 marks)

b) Apply any possible defence that Beanie may raise.

(5 marks)

(Total: 25 marks)

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